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ANDREW L. NEY 4 ANDORRA HILL LAFAYETTE HILL, PA 19444				
EXAMINER				
PLUCINSKI, JAMESUE A				
ART UNIT		PAPER NUMBER		
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Please find below and/or attached an Office communication concerning this application or proceeding.

The time period for reply, if any, is set in the attached communication.

Office Action Summary

Application No.

10/784,729

Applicant(s)

DIONE, DIEGANE

Examiner

JAMISUE A. PLUCINSKI

Art Unit

3629

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --
Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

- 1) ☒ Responsive to communication(s) filed on 26 January 2009.
- 2a) ☒ This action is **FINAL**. 2b) ☐ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

- 4) ☒ Claim(s) 22-41 is/are pending in the application.
- 4a) Of the above claim(s) _____ is/are withdrawn from consideration.
- 5) ☐ Claim(s) _____ is/are allowed.
- 6) ☒ Claim(s) 22-41 is/are rejected.
- 7) ☐ Claim(s) _____ is/are objected to.
- 8) ☐ Claim(s) _____ are subject to restriction and/or election requirement.

Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on _____ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

Priority under 35 U.S.C. § 119

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some * c) ☐ None of:
1. ☐ Certified copies of the priority documents have been received.
 2. ☐ Certified copies of the priority documents have been received in Application No. _____.
 3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

* See the attached detailed Office action for a list of the certified copies not received.

Attachment(s)

- 1) ☒ Notice of References Cited (PTO-892)
- 2) ☐ Notice of Draftsperson's Patent Drawing Review (PTO-948)
- 3) ☐ Information Disclosure Statement(s) (PTO/SG/US)
Paper No(s)/Mail Date _____
- 4) ☐ Interview Summary (PTO-413)
Paper No(s)/Mail Date _____
- 5) ☐ Notice of Informal Patent Application
- 6) ☐ Other: _____

DETAILED ACTION

Claim Rejections - 35 USC § 112

1. The following is a quotation of the second paragraph of 35 U.S.C. 112:

The specification shall conclude with one or more claims particularly pointing out and distinctly claiming the subject matter which the applicant regards as his invention.

2. Claims 24-28, 30-32, 35, 36, 38, 41 and 41 are rejected under 35 U.S.C. 112, second paragraph, as being indefinite for failing to particularly point out and distinctly claim the subject matter which applicant regards as the invention.

3. With respect to Claims 24 and 30: these claims are directed to a method for managing an occupant of an area during an emergency event, however in the body of the claims, all that is being done is storing and transmitting of information. So it is unclear if all these steps are being done during the emergency event, or if a notification of an emergency even is ever received or what step causes the method to be performed. As written the claims simply appear to be a method of storing and retrieving information and information being transmitted.

4. Claims 24 and 30 recite the limitation "the selected occupant" in the determining step. There is insufficient antecedent basis for this limitation in the claim.

5. With respect to Claims 24 and 30: the claims transmit evacuation information from a computer to an occupant, from a computer to a third party and then from a third party to an occupant. This is the same information that the occupant is already receiving from the computer, therefore it is unclear why this step is being done twice.

Claim Rejections - 35 USC § 101

6. 35 U.S.C. 101 reads as follows:

- a. Whoever invents or discovers any new and useful process, machine, manufacture, or composition of matter, or any new and useful improvement thereof, may obtain a patent therefor, subject to the conditions and requirements of this title.

7. Claims 24-28, 30-32, 35, 36, 38, 41 and 41 are rejected under 35 U.S.C. 101 because the claimed invention is directed to non-statutory subject matter.

8. The first step in determining whether a claim recites patent eligible subject matter is to determine whether the claim falls within one of the four statutory categories of invention recited in 35 USC 101: process, machine, manufacture and composition of matter. The latter three categories define "things" or "products", while a "process" consists of a series of steps or acts to be performed.

9. In Claims 24-28, 30-32, 35, 36, 38, 41 and 41, the claims are drawn to a method. For purposes of 101, a "process" has been given a specialized, limited meaning by the courts. Based on *In re Bilski* (Federal Circuit 2007-1130), the court outlined a test used to determine whether a method satisfies 35 USC 101, is a machine-or-transformation test. *In re Bilski* states "the machine-or-transformation test is a two-branched inquiry; an applicant may show that a process claim satisfies 101 either by showing that his claim is tied to a particular machine, or by showing that his claim transforms an article. See *Benson*, 409 U.S. at 70. Certain considerations are applicable to analysis under either branch. First as illustrated by *Benson* and discussed below, the use of a specific machine or transformation of an article must impose meaningful limits on the claim's scope to impart patent-eligibility. See *Benson*, 409 U.S. at 71-72. Second, the involvement of the machine or transformation in the claimed process must not merely be insignificant extra-solution activity. See *Flook*, 437 US at 590. Claims 24-28, 30-32, 35, 36, 38, 41 and 41 are drawn to a method for managing occupants of a building during an emergency event, the claim recites storing information into a computer, transmitting information from a

device to a computer, and further transmits the retrieved/stored information to the devices. However the steps which are positively stated as involving a particular machine are simple storing and transmitting steps. Storing and transmitting is considered to be insignificant extra-solution activity. In order for the claims to be directed to statutory subject matter the process steps which form the heart of the claim must be done or utilize a particular machine. In claims 24 and 30, those steps are considered to be the accessing, determining and retrieving steps. These steps are not recited to be done by the particular machine, therefore the claims are not considered to be directed to statutory subject matter, due to the fact that the only steps being recited as being done by a particular machine are considered to be extra solution activity.

Claim Rejections - 35 USC § 102

10. The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis for the rejections under this section made in this Office action:

A person shall be entitled to a patent unless –

(e) the invention was described in (1) an application for patent, published under section 122(b), by another filed in the United States before the invention by the applicant for patent or (2) a patent granted on an application for patent by another filed in the United States before the invention by the applicant for patent, except that an international application filed under the treaty defined in section 351(a) shall have the effects for purposes of this subsection of an application filed in the United States only if the international application designated the United States and was published under Article 21(2) of such treaty in the English language.

11. Claims 22-37, and 39-41 are rejected under 35 U.S.C. 102(e) as being anticipated by Hunter et al. (US 7,233,781).

12. With respect to Claims 22 and 29: Hunter discloses the use of a system (See abstract) comprising:

- b. Occupant location communications device (Reference numeral 40) with a receiver and transmitter (See Column 9, lines 18-31);

- c. Computer comprising:
 - i. Storage means (Reference numerals 25, 28)
 - ii. Receiver and Transmitter (Hunter discloses information is electronically received from the transmitting party, therefore it is inherent in the party that there is a receiver and transmitter, otherwise how would the information be received and transmitted);
 - iii. CPU (Reference numeral 29)
 - d. Third party location communications device (Hunter discloses multiple user devices, 40, therefore whether they are a third party device or another user device, structurally they are the same) with a receiver and a transmitter (See Column 9, lines 18-31).
 - e. With respect to the limitations of what these elements are used for and what information they transmit and receive: Those limitations are considered to be intended use of the system and do not structurally affect the system. It has been held that a recitation with respect to the manner in which a claimed apparatus is intended to be employed does not differentiate the claimed apparatus from a prior art apparatus satisfying the claimed structural limitations. *Ex parte Masham*, 2 USPQ2d 1647 (1987)
13. With respect to Claims 23 and 37: See Column 7, lines 26-65.
14. With respect to Claims 33, 34 and 39: These limitations are considered to be intended use of the system and what information is being transmitted and received does not structurally effect the system. It has been held that a recitation with respect to the manner in which a claimed

apparatus is intended to be employed does not differentiate the claimed apparatus from a prior art apparatus satisfying the claimed structural limitations. *Ex parte Masham*, 2 USPQ2d 1647 (1987)

15. With respect to Claim 40: Hunter discloses the computer having means for compiling and sorting the status information (Hunter discloses the system performing the steps of compiling and sorting information, therefore has the means to do it, Column 2, lines 60-67 and Column 4, lines 4-17)

16. With respect to Claims 24 and 30: Hunter discloses a method for managing an occupant comprising:

f. Storing in a computer:

iv. Physical area information (Column 6, lines 46-57 and Column 29, lines 13-36);

v. Occupant location and identification information (Column 6, lines 39-47, and Column 22 lines 40-50);

vi. Third party identification information (Hunter discloses the information can be sent to a third party such as one which assists a disabled person having an assist device (Column 11, lines 22-33), placing supplemental external devices (Column 25, lines 43-52) and transmitting information to emergency workers such as police or fire fighters in the area (Column 26, lines 14-28));

vii. Evacuation information associated with a location or identity of an occupant (Column 9 line 52 to Column 10, line 5 and Column 26, lines 11-16).

- g. Transmitting from an occupant location communications device occupant location information and receiving at the computer (Column 9, lines 18-31);
 - h. Transmitting 3rd party location information from a third party device (Column 25, lines 44-52);
 - i. Accessing stored occupant location information (Column 2, lines 60-67 and Column 9, lines 18-31);
 - j. Determining the location of the occupant (Column 9, lines 18-31 and Column 22, lines 51-65);
 - k. Retrieve stored evacuation information and forwarding it to the occupant and to the third parties (Column 25 line 53 to Column 26, line 5 and Column 26, lines 11-28).
17. With respect to Claims 25 and 31: See Hunter, Column 22, lines 40-50.
18. With respect to Claims 26-28: Hunter discloses multiple third parties including local emergency services, neighbors and transmitting parties at the local, regional and national (Column 24, lines 65-67 and Column 28, line 63 to Column 29, line 12).
19. With respect to Claim 32: Hunter discloses the firefighters using isotherms to help aid in the evacuation, therefore the examiner considers this to be generated during the emergency event (Column 26, lines 6-28).
20. With respect to Claim 35: See Hunter, Column 26, lines 6-28.
21. With respect to Claim 36: See Hunter, Column 26, lines 11-17.
22. With respect to Claim 41: Hunter discloses the system performing the steps of compiling and sorting information, (Column 2, lines 60-67 and Column 4, lines 4-17)

Claim Rejections - 35 USC § 103

23. The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

24. Claim 38 is rejected under 35 U.S.C. 103(a) as being unpatentable over Hunter et al.

25. With respect to Claim 38: Hunter discloses sending a message to a user device or a set top box, where it controls the device, changes the channel and even turns the device on if it is off and well as discloses requiring a response from a user. However fails to disclose disabling the device until a response is sent, and once the user responds enabling the device again.

26. The examiner takes official notice that it is old and well known in the art that when a program is running, and an important alert pops up, the program is prevented from being used until the user responds to the alert. This happens in many Microsoft ® office programs, a dialogue box is open and the program cannot be used again until the user responds to the dialogue box. It also happens in pop up reminders in calendaring systems, an alarm will pop up and the user must hit a snooze button or dismiss button before being able to use the calendar again. Therefore it would have been obvious to one having ordinary skill in the art at the time the invention was made, to modify Hunter to have the device being suspended from use when an alert comes up, in order to make sure the alert is seen before and not ignored.

Response to Arguments

27. Applicant's arguments with respect to claims 22-41 have been considered but are moot in view of the new ground(s) of rejection.

Conclusion

28. The prior art made of record and not relied upon is considered pertinent to applicant's disclosure. Kirtland (US 2004/0203568) discloses the use of a computerized warning system with users and emergency workers, Peterson et al. (6,496,110) discloses the use of a fire emergency response with warnings being sent to user devices.

29. Applicant's amendment necessitated the new ground(s) of rejection presented in this Office action. Accordingly, **THIS ACTION IS MADE FINAL**. See MPEP § 706.07(a). Applicant is reminded of the extension of time policy as set forth in 37 CFR 1.136(a).

A shortened statutory period for reply to this final action is set to expire THREE MONTHS from the mailing date of this action. In the event a first reply is filed within TWO MONTHS of the mailing date of this final action and the advisory action is not mailed until after the end of the THREE-MONTH shortened statutory period, then the shortened statutory period will expire on the date the advisory action is mailed, and any extension fee pursuant to 37 CFR 1.136(a) will be calculated from the mailing date of the advisory action. In no event, however, will the statutory period for reply expire later than SIX MONTHS from the date of this final action.

Any inquiry concerning this communication or earlier communications from the examiner should be directed to JAMISUE A. PLUCINSKI whose telephone number is (571)272-6811. The examiner can normally be reached on M-Th (5:30 - 4:00).

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, John Weiss can be reached on (571) 272-6812. The fax phone number for the organization where this application or proceeding is assigned is 571-273-8300.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free). If you would like assistance from a USPTO Customer Service Representative or access to the automated information system, call 800-786-9199 (IN USA OR CANADA) or 571-272-1000.

/Jamisue A. Plucinski/
Primary Examiner, Art Unit 3629